

United States
Department of the Interior
Bureau of Land Management

Miles City Field Office

Edwards Renewal ROW
MTM-81027

Categorical Exclusion (CX)
DOI-BLM-MT-C020-2013-0039-CX

For Further Information Please Contact:

Bureau of Land Management
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301
406-233-2800

BLM



UNITED STATES DEPARTMENT OF INTERIOR
BUREAU OF LAND MANAGEMENT
Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

CATEGORICAL EXCLUSION REVIEW AND APPROVAL

A. Background

BLM Office: Miles City Field Office

Serial No.: MTM-81027

NEPA Number (if applicable): DOI-BLM-MT-C020-2013-0039-CX

Proposed Action Title/Type:

Edwards Renewal of Right-of-way MTM-81027

Location of Proposed Action:

T. 3 S., R. 52 E., Section 32: Lots 7, 9, and 10, Powder River County, Montana, PMM

Description of Proposed Action:

Dale Edwards, Inc. was issued a Right-of-way (ROW) MTM-81027 for an irrigation ditch across two parcels of Federal land (Public Domain) on November 30, 1992. It will expire on December 31, 2012. The original grant was authorized under the Federal Land Policy and Management Act of 1976. This right-of-way would be renewed under the Federal Land Policy and Management Act (FLPMA) of October 21, 1976. The right-of-way would be subject to all applicable provisions of the regulations at this time. The holder has requested that the right-of-way be renewed for a 30-year term and be renewable. The holder has paid the required processing fee of \$403 for a Category 2 FLPMA right-of-way. They would be required to pay rental and they are current on their rental payments. The right-of-way that would be renewed is 75 feet wide, 1,500 feet long, and consists of 2.58 acres, more or less. This right-of-way has been inspected and is being used for the purpose for which it was authorized.

The standard stipulations for cultural and/or paleontological resource protection and toxic substances would be made a part of the right-of-way grant, as would the standard stipulation that all activities associated with the right-of-way would be conducted within the authorized limits of the right-of-way. The applicant shall be responsible for weed control on disturbed areas within the limits of the right-of-way. There would be no construction or routine maintenance when the soils are too wet. The appropriate seedmix would be used for reclamation. The holder would be required to contact entities or persons who hold an authorized right, on adjacent or affected lands. The right-of-way would be subject to mitigations set forth in the application and plan of development. The right-of-way would be renewed pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and be subject to the terms and conditions in 43 CFR 2800 and the attached stipulations. The holder would

be subject to cost recovery fees and rental. The right-of-way would be monitored for use and before future renewal or termination.

B. Land Use Plan Conformance

Land Use Plan Name: Powder River R. A. RMP/EIS Record of Decision (ROD)

Date Approved/Amended: Approved on March 15, 1985

The proposed action is in conformance with the applicable LUP because it is specifically provided for in the following LUP decision(s): This proposed action is in conformance with the Powder River RMP/EIS ROD which was approved on March 15, 1985. On page 4 of the Record of Decision, it states that all right-of-way (ROW) applications will continue to be approved on a case-by-case basis with appropriate stipulations. The proposed action has been reviewed for conformance with this plan and its terms and conditions as required by 43 CFR 1610.5

C. Compliance with NEPA:

The Proposed Action is categorically excluded from further documentation under the National Environmental Policy Act (NEPA) in accordance with 516 DM 11.9E (9) for renewal of a right-of-way where no additional rights are conveyed beyond those granted by the original authorizations. This categorical exclusion is appropriate in this situation because there are no extraordinary circumstances potentially having effects that may significantly affect the environment. The proposed action has been reviewed, and, as documented below, none of the extraordinary circumstances described in 516 DM2 apply.

Extraordinary Circumstances		
The project would:		
1. Have significant impacts on public health or safety.		
Yes	No X	Rationale: <i>The project would not have significant impacts on public health and safety as it is for the renewal of an existing right-of-way. DDL 11/28/2012</i>
2. Have significant impacts on such natural resources and unique geographic characteristics as historic or cultural resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; migratory birds; and other ecologically significant or critical areas.		
Yes	No X	Rationale: <i>Impacts would not be significant as the proposed action is to renew an existing right-of-way. DDL 11/28/2012</i>
3. Have highly controversial environmental effects or involve unresolved conflicts		

concerning alternative uses of available resources [NEPA section 102 (2) (E)].		
Yes	No X	Rationale: <i>No controversial environmental effects or unresolved conflicts. DDL 11/28/2012</i>
4. Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.		
Yes	No X	Rationale: <i>No highly uncertain and potentially significant environmental effects or unique or unknown environmental risks. DDL 11/28/2012</i>
5. Establish a precedent for future action or represent a decision in principal about future actions with potentially significant environmental effects.		
Yes	No X	Rationale: <i>This action is not connected to another action that would require further environmental analysis nor will it set a precedent for future actions that would normally require environmental analysis. DDL 11/28/2012</i>
6. Have a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects.		
Yes	No X	Rationale: <i>There would be no cumulative impacts from this project. See CFR 1508.7. DDL 11/28/2012</i>
7. Have significant impacts on properties listed, or eligible for listing, on the National Register of Historic Places as determined by either the bureau or office.		
Yes	No X	Rationale: <i>Confirm that cultural surveys have been completed; the appropriate data bases have been reviewed; and appropriate concurrence from SHPO and tribes have been received indicating that significant impacts are not expected.</i> A review of BLM and Montana SHPO Cultural Resource Records show the irrigation ditch was inventoried for cultural resources in 1993. No cultural resources were observed in the inventory (See BLM Cultural Resources Report MT-020-13-58). The ROW is in an area of Quaternary Alluvium which has a Potential Fossil Yield Classification (PFYC) rating of 3a. Vertebrate fossils are not expected to occur. Unanticipated discoveries of cultural or paleontological resources during maintenance on the irrigation ditch is subject to the cultural/paleontological stipulation in the ROW grant. DM 12/03/12
8. Have significant impacts on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have significant impacts on designated Critical Habitat for these species.		
Yes	No X	Rationale: <i>There would be no impacts to threatened or endangered species as none exist within or near the proposed action area. JCH 12/4/12</i>
9. Violate a Federal law, or a State, local or tribal law or requirement imposed for the		


protection of the environment.		
Yes	No X	Rationale: <i>No laws are being violated by this action. DDL 11/28/2012</i>
10. Have a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).		
Yes	No X	Rationale: <i>Does not have a disproportionately high and adverse effect on low income or minority populations. DDL 11/28/2012</i>
11. Limit access to and ceremonial use of Indian sacred sites on Federal lands by Indian religious practitioners or significantly adversely affect the physical integrity of such sacred sites (Executive Order 13007).		
Yes	No X	Rationale: <i>Consultation with tribes regarding Indian sacred sites must take place</i> The proposed action is to renew an existing ROW. The action would not limit or provide any new access to public lands. The proposed action would not impact cultural resources.. The Ethnographic Overview of Southeast Montana does not identify any sites of concern in the area of the proposed action. DM 12/02 12
12. Contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).		
Yes	No X	Rationale: <i>The proposed action will not contribute to the introduction or spread of noxious weeds as an existing right-of-way is being renewed. BSW 11/29/2012</i>



Signature of Environmental Coordinator

12/11/2012

Date



Signature of Supervisory Land Use Specialist

12/12/2012

Date

Decision Record for Categorical Exclusion
Renewal of Right-of-way MTM-81027 Edwards, Inc.
DOI-BLM-MT-020-2013-0039-CX

Decision: I have made the decision to renew the existing right-of-way to Dale Edwards, Inc. for an irrigation ditch located on the following Federal land (Public Domain):


T. 3 S., R. 52 E., Section 32: Lots 7, 9, and 10, Powder River County, Montana, PMM

The standard stipulations for cultural and/or paleontological resource protection, toxic substances stipulation, weed control stipulation as well as other stipulations will be made part of the right-of-way renewal grant. The right-of-way will be renewed pursuant to Title V of the Federal Land Policy and Management Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761) and be subject to all applicable provisions of the regulations at 43 CFR 2800 and the attached stipulations. The applicant will be subject to cost recovery fees and rental. The right-of-way will be monitored for use and before future renewal or termination.

Rationale for Decision: The proposed action meets the criteria for a categorical exclusion under 516 DM 11.9E (9) for renewal of a right-of-way where no additional rights are conveyed beyond those granted by the original authorizations and none of the exceptions in 516 DM 2 apply. Further the actions are in conformance with the Powder River RMP/EIS ROD, which was approved on March 15, 1985.

I considered the proposed action and associated stipulations which will be included in the right-of-way renewal grant and are attached below. There is no potential for significant impacts. Use of this CX is appropriate and I have decided to implement this action.

D: Signature


_____ Acting 12/12/2012
Signature of Authorizing Official Date

Name: Todd D. Yeager.

Title: Field Manager.

Contact Person

For additional information concerning this CX review and decision, contact:

Dalice Landers, Realty Specialist (406-233-2836)
BLM – Miles City Field Office
111 Garryowen Road
Miles City, Montana 59301

Exhibit “A”
Stipulations
December 12, 2012

1. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. Holder shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery will be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of evaluation and any decision as to proper mitigation measures will be made by the authorized officer after consulting with the holder.

2. The holder shall be responsible for weed control on disturbed areas within the limits of the right-of-way. The holder is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (within limits imposed in the grant stipulations).

3. No construction or routine maintenance activities shall be performed during periods when the soil is too wet to adequately support construction equipment. If such equipment creates ruts in excess of four (4) inches deep, the soil shall be deemed too wet to adequately support construction equipment.

4. The holder shall conduct all activities associated with the construction, operation, maintenance, and termination of the right-of-way within the authorized limits of the right-of-way.

5. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et. seq.) with regard to any toxic substances that are used, generated by or stored on the right-of-way or on facilities authorized under this right-of-way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

6. In the event that the public land underlying the right-of-way (ROW) encompassed in this grant, or a portion thereof, is conveyed out of Federal ownership and administration of the ROW or the land underlying the ROW is not being reserved to the United States in the patent/deed and/or the ROW is not within a ROW corridor being reserved to the United States in the patent/deed, the United States waives any

right it has to administer the right-of-way, or portion thereof, within the conveyed land under Federal laws, statutes, and regulations, including the regulations at 43 CFR Part 2800, including any rights to have the holder apply to BLM for amendments, modifications, or assignments and for BLM to approve or recognize such amendments, modifications, or assignments. At the time of conveyance, the patentee/grantee, and their successors and assigns, shall succeed to the interests of the United States in all matters relating to the right-of-way, or portion thereof, within the conveyed land and shall be subject to applicable State and local government laws, statutes, and ordinances. After conveyance, any disputes concerning compliance with the use and the terms and conditions of the ROW shall be considered a civil matter between the patentee/grantee and the ROW Holder.

7. Holder shall remove only the minimum amount of vegetation necessary for the construction of structures and facilities. Topsoil shall be conserved during excavation and reused as cover on disturbed areas to facilitate regrowth of vegetation.

8. The holder shall seed all disturbed areas with the seed mixture listed below. The seed mixture shall be planted in the amounts specified in pounds of pure live seed (PLS)/acre. There shall be no primary or secondary noxious weed seed in the seed mixture. Seed shall be tested and the viability testing of seed shall be done in accordance with State law(s) and within six months prior to purchase. Commercial seed shall be either certified or registered seed. The seed mixture container shall be tagged in accordance with State law(s) and available for inspection by the authorized officer.

Seed shall be planted using a drill equipped with a depth regulator to ensure proper depth of planting where drilling is possible. The seed mixture shall be evenly and uniformly planted over the disturbed area. (Smaller/heavier seeds have a tendency to drop to the bottom of the drill and are planted first. The holder shall take appropriate measures to insure this does not occur.) Where drilling is not possible, seed shall be broadcast and the area shall be raked or chained to cover the seed. When broadcasting the seed, the pounds per acre noted below are to be doubled. The seeding will be repeated until a satisfactory stand is established as determined by the authorized officer. Evaluation of growth will not be made before completion of the second growing season after seeding. The authorized officer is to be notified a minimum of seven (7) days prior to seeding of the project.

Seed Mixture (clayey) - Western wheatgrass must be included in the mix. Thickspike wheatgrass may be substituted only when western wheatgrass is unavailable. The combination for the seed mixture must include at least four of the following species including Western wheatgrass:

<i>Species of Seed</i>	<i>(Variety)</i>	<i>Common Name</i>	<i>Pounds/acre *(PLS)</i>
<u>Pascopyrum smithii</u>	(Rosanna)	Western wheatgrass	3.00
<u>Pseudoroegneria spicata</u>	(Goldar)	Bluebunch wheatgrass	2.00
<u>Stipa viridula</u>	(Lodom)	Green needlegrass	2.00
<u>Elymus trachycaulus</u>	(Pryor)	Slender wheatgrass	2.00
<u>Stipa comata</u>		Needleandthread	1.00
<u>Bouteloua curtipendula</u>		Sideoats Grama	2.00

**Pure Live Seed (PLS) formula: % of purity of seed mixture times % germination of seed mixture = portion of seed mixture that is PLS.*

9. This grant is issued subject to the holder's compliance with the mitigations set forth in the application/plan of development.

10. Construction activity and surface disturbance will be prohibited during the period from December 1 to March 31 for the protection of mule deer and whitetail deer winter range.

11. Construction activity and surface disturbance will be prohibited during the period from April 15 to July 15 for the protection of migratory bird nesting activities.

12. The holder of this right-of-way grant or the holder's successor in interest shall comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and the regulations of the Secretary of the Interior issued pursuant thereto.

13. The holder shall coordinate with the existing right-of-way holders, grazing lessees/permittees, and other parties who hold an authorized right on adjacent and affected land.

14. Prior to termination of the right-of-way, the holder shall contact the authorized officer to arrange a pre-termination conference. This conference will be held to review the termination provisions of the grant.